



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0798; FRL-10218-01-R9]

Finding of Failure to Submit Contingency Measures for the 2008 8-Hour Ozone NAAQS; Coachella Valley, California, and West Mojave Desert, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to find that the State of California has failed to submit State Implementation Plan (SIP) revisions to satisfy the contingency measures requirements of the Clean Air Act (CAA) for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS or “standards”) for both the Riverside County (Coachella Valley), California (“Coachella Valley”) and Los Angeles-San Bernardino Counties (West Mojave Desert), California (“West Mojave Desert”) nonattainment areas. Under the CAA and the EPA’s implementing regulations, by July 20, 2016, California was required to submit, among other SIP revisions, contingency measures for the Coachella Valley and West Mojave Desert nonattainment areas to be triggered if the areas fail to attain or fail to meet reasonable further progress (RFP). The State submitted the required SIP revisions, but subsequently withdrew the contingency measures portion. This finding establishes a 2-year deadline for the EPA to promulgate Federal Implementation Plans (FIPs) to address the contingency measure requirements for these areas, unless, prior to the EPA promulgating FIPs, California submits, and the EPA approves, SIP revisions that meet these requirements. The CAA also provides for the imposition of sanctions if California does not submit the required SIP revisions within timeframes specified by the CAA.

DATES: This final action is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Notice and Comment Under the Administrative Procedure Act (APA)

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making findings of failure to submit SIPs, or elements of SIPs, required by the CAA, where states and territories have made no submissions, or incomplete submissions, to meet the requirement. Thus, notice and public procedures are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

II. Background and Overview

A. Ozone Standards, Area Designations, and SIP Development

Under section 109 of the CAA, the EPA promulgates NAAQS for pervasive air pollutants, such as ozone. In 2008, the EPA promulgated new 8-hour primary and secondary ozone NAAQS of 0.075 ppm (“2008 ozone NAAQS”) to replace the 1997 ozone NAAQS of 0.08 ppm.¹ Although the EPA further strengthened the 8-hour ozone NAAQS to 0.070 ppm in

¹ 73 FR 16436 (March 27, 2008).

2015, this action relates to the requirements for the 2008 ozone NAAQS.² Following promulgation of new or revised NAAQS, the EPA is required by the CAA to designate areas throughout the nation as either attaining or not attaining the standards. Effective July 20, 2012, the EPA designated both Coachella Valley and West Mojave Desert as nonattainment for the 2008 ozone NAAQS and classified the areas as “Severe-15.”³ Areas designated nonattainment for ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and to the ozone-specific planning requirements of CAA section 182.

On March 6, 2015, the EPA published a final implementation rule for the 2008 ozone NAAQS, detailing the requirements applicable to ozone nonattainment areas and providing specific deadlines for SIP submittals.⁴ For areas classified Serious and above, the SIP revisions providing for an attainment demonstration, RFP demonstration, and attainment and RFP contingency measures were due 4 years after the effective date of area designations (i.e., by July 20, 2016).⁵ Contingency measures are additional controls or measures to be implemented in the event an area fails to make RFP or to attain the NAAQS by the attainment date.

In California, the California Air Resources Board (CARB) is the agency responsible for the adoption and submission to the EPA of SIPs and SIP revisions. Working jointly with CARB, local and regional air pollution control districts in California are responsible for the development of regional air quality plans. The South Coast Air Quality Management District (SCAQMD) develops and adopts plans to address CAA planning requirements applicable to the Coachella Valley. The Antelope Valley Air Quality Management District (AVAQMD) and Mojave Desert Air Quality Management District (MDAQMD) share responsibility for air quality planning in the West Mojave Desert. These agencies adopt and submit their plans to CARB for state adoption and submission to the EPA as revisions to the California SIP.

² Information on the 2015 ozone NAAQS is available at 80 FR 65292 (October 26, 2015).

³ 77 FR 30088 (May 21, 2012).

⁴ 80 FR 12264 (March 6, 2015).

⁵ 40 CFR 51.1108(b) and 40 CFR 51.1110.

B. State Submissions and Withdrawals

CARB submitted contingency measures for the 2008 ozone NAAQS for the Coachella Valley in the *Final 2016 Air Quality Management Plan (March 2017)* (“2016 AQMP”), submitted on April 27, 2017,⁶ the *Coachella Valley 8-Hour Ozone Attainment Contingency* (“Coachella Attainment Contingency”) submitted on May 5, 2017,⁷ and the *2018 Updates to the California State Implementation Plan* (“2018 SIP Update”) submitted on December 5, 2018. On September 16, 2020, the EPA approved the relevant portions of these SIP revisions as meeting all applicable ozone nonattainment area requirements for the 2008 ozone NAAQS in the Coachella Valley, except for the contingency measure requirements, for which the EPA deferred action.⁸

CARB submitted contingency measures for the 2008 ozone NAAQS for the West Mojave Desert in a SIP revision submitted on June 2, 2017.⁹ This submittal includes attainment plans prepared by the AVAQMD (“AVAQMD Attainment Plan”)¹⁰ and the MDAQMD (“MDAQMD Attainment Plan”),¹¹ an accompanying staff report prepared by CARB (“CARB Staff Report”),¹² and other supporting documents. We refer to all the documents collectively submitted to the EPA on June 2, 2017 as the “2016 WMD Attainment Plan.” Some elements of the 2016 WMD Attainment Plan were updated for the West Mojave Desert nonattainment area in the 2018 SIP Update. On September 27, 2021, the EPA took final action to approve the relevant portions of the 2016 WMD Attainment Plan and 2018 SIP Update as meeting all the applicable ozone nonattainment area requirements, except for the contingency measure requirements, for which

⁶ Letter dated April 27, 2017, from Richard Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region IX.

⁷ Letter dated May 5, 2017, from Richard Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region IX.

⁸ 85 FR 57714 (September 16, 2020).

⁹ Letter dated June 2, 2017, from Richard Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region IX.

¹⁰ AVAQMD, “AVAQMD Federal 75 ppb Ozone Attainment Plan (Western Mojave Desert Nonattainment Area),” adopted on March 21, 2017.

¹¹ MDAQMD, “MDAQMD Federal 75 ppb Ozone Attainment Plan (Western Mojave Desert Nonattainment Area),” adopted on February 27, 2017.

¹² CARB, Staff Report, “CARB Review of the Mojave Desert AQMD and Antelope Valley AQMD Federal 75 ppb Ozone Attainment Plans for the Western Mojave Desert Nonattainment Area,” released April 21, 2017.

the EPA deferred action.¹³ CARB subsequently submitted additional contingency measures provisions in the *Amendment to the 75 ppb 2008 8hr O3 Contingency Measure for MDAQMD portion of the Western Mojave Desert Nonattainment Area* (“MDAQMD Contingency Amendment”) on February 1, 2022.¹⁴

On August 26, 2021, following CARB’s submittals for the Coachella Valley and West Mojave Desert, the U.S. Court of Appeals for the Ninth Circuit remanded the EPA’s conditional approval of contingency measures for the 2008 ozone NAAQS for the San Joaquin Valley nonattainment area, finding that the EPA had not provided a reasoned explanation for considering emission reductions from already-implemented measures.¹⁵ CARB subsequently withdrew the contingency measures elements of the 2016 AQMP, the Coachella Attainment Contingency, and the relevant portions of the 2018 SIP Update (for the Coachella Valley), and the contingency measures elements of the 2016 WMD Attainment Plan, the relevant portions of the 2018 SIP Update, and the MDAQMD Contingency Amendment (for the West Mojave Desert),¹⁶ following requests from the local air districts.¹⁷

III. Final Action and Consequences of a Finding of Failure to Submit

Based upon the withdrawal of the contingency measures described in Section II of this rulemaking, the EPA is finding that California has failed to make required submittals for the 2008 ozone NAAQS for the Coachella Valley and West Mojave Desert nonattainment areas. With this finding, section 179 of the CAA starts sanctions clocks and a FIP clock. Section 179(a) of the CAA specifies the consequences if the EPA finds that a state has failed to make a required SIP submission, if the EPA has determined that a submitted SIP is incomplete, or if the EPA has

¹³ 86 FR 53223 (September 27, 2021).

¹⁴ Letter dated January 31, 2022, from Richard W. Corey, CARB, to Martha Guzman, Regional Administrator, EPA Region IX.

¹⁵ *Association of Irrigated Residents. v. EPA*, 10 F.4th 937 (9th Cir. 2021).

¹⁶ See two letters dated August 8, 2022, from Edie Chang, Deputy Executive Officer to Martha Guzman, Regional Administrator, USEPA Region IX, addressing Coachella Valley and West Mojave Desert.

¹⁷ See letter dated June 24, 2022, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB and letters dated June 30, 2022, from Bret Banks, Executive Director/APCO, AVAQMD, and Brad Poiriez, Executive Director/APCO, MDAQMD, to Sylvia Vanderspek, Air Quality Planning Branch Chief, CARB.

disapproved a SIP submission. If the EPA has not affirmatively determined that California has made complete submissions to address the contingency measures requirements for the Coachella Valley or West Mojave Desert nonattainment areas within 18 months of the effective date of this action, the offset sanction identified in section 179(b)(2) will apply within that area, pursuant to section 179(a) and (b) and 40 CFR 52.31. If the EPA has not affirmatively determined that California has made a complete SIP submission for either area within six months after imposition of the offset sanction, the highway funding sanction will be imposed, as required under section 179(b)(1) of the CAA and 40 CFR 52.31.

California may avoid these sanctions by taking timely action to remedy this finding. The 18-month clock governing the CAA's imposition of sanctions for these areas will stop and sanctions will not take effect if the EPA finds that the State has made a complete SIP submission addressing the contingency measures requirements for these areas area within 18 months of the date of this finding. Similarly, the EPA is not required to promulgate a FIP if California makes the required SIP submissions, and the EPA takes final action to approve the submissions within two years of this finding of failure to submit a required SIP. In sum, the CAA does not require sanctions or a FIP if the State and the EPA take timely action to remedy this finding.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA because it does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175, because this action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-

202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health effects of their programs, policies, and activities on minority populations and low-income populations in the United States. There is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final action does not affect the

finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 21, 2022.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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